IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.347 OF 2005

Essar Tools & Anr. ...Applicants
vs.
Bipico Industries (Tools) P.Ltd. & Anr. ...Respondents

Mr.Sanjay Bhatia for the Applicants
Ms M.M.Deshmukh,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : OCTOBER 25,2005

P.C.:

1. Heard Advocate for the Applicants and the learned A.P.P. for State. The Advocate for the Applicants states that private notice has been served on the Respondent No.1. The Applicants are the accused in a complaint under Section 138 of Negotiable Instruments Act, 1881. The cheque amount is Rs.5,00,000/-. The complaint ended in conviction of the Applicants. Apart from the substantive sentence, the Applicant No.2 was directed to undergo S.I. for four months. He was also directed to pay a fine of Rs.7,00,000/-. The learned Trial Judge directed that out of fine amount of Rs.7,00,000/-, a sum of Rs.5,00,000/- be paid as compensation to the original complainant. In default of payment of fine amount, the learned Trial Judge directed the Applicant No.2 to undergo S.I. for one month. An Appeal was preferred by the Applicants in the Sessions Court. By order dated 27th September 2005 the Appeal was admitted. The learned Sessions Judge suspended the substantive sentence till 24th October 2005 and in the meantime the Appellant was directed to deposit

Rs.2,50,000/- on or before 24th October 2005.

2. The learned Counsel for the Applicants invited my attention to various provisions of the Code of Criminal Procedure, 1973. He submitted that the learned Magistrate had no power to direct payment of fine of Rs.7,00,000/- and the said order is clearly without jurisdiction. He submitted that there was no direction given by the trial Court for payment of compensation under Section 357 of the said Code. He submitted that the learned Sessions Judge could not have imposed condition of depositing the amount of Rs.2,50,000/- for granting bail in favour of the Applicant No.2. He submitted that therefore the direction given to deposit Rs.2,50,000/- be quashed and set aside.

3. I have considered the submissions. In view of the law laid down by the Apex Court in the decision reported in 2001 (2) S.C.C. page 416 (Stanny Felix Pinto Vs. Jangid Builders Private Ltd. and another), the learned Sessions Judge was justified in imposing the condition of depositing the amount of Rs.2,50,000/-. In the aforesaid decision, the Apex court has observed that while suspending the sentence for offence under Section 138 of the said Act of 1881, it is advisable that the Court imposes a condition that the fine part is remitted within a certain period. The Apex Court observed that if the fine amount is heavy, the Court can direct that at least a portion thereof to be remitted as the convicted person

wants the sentence to be suspended during the pendency of the Appeal. In the present case the fine amount is Rs.7,00,000/- and only part thereof i.e. Rs.2,50,000/- has been ordered to be deposited by the Sessions Court. In view of the aforesaid decision of the Apex Court, no fault can be found with the impugned order.

4. At this stage, it is pointed out that the Applicants are facing several difficulties and therefore the amount may be reduced and reasonable time may be granted to deposit the amount. It is clear that out of fine amount of Rs.7,00,000/- only a sum of Rs.2,50,000/- has been ordered to be deposited. Considering the averments made in the application, time to deposit the amount deserves to be extended.

5. Hence I pass the following order :

i) Application is dismissed. Impugned order dated 27th September 2005 passed by learned Sessions Judge is confirmed.

ii) Time to deposit the sum of Rs.2,50,000/- is extended till 25th November 2005. Accordingly, substantive sentence will stand suspended till 25th November 2005 subject to the condition of depositing a sum of Rs.2,50,000/- on or before that date.

iii) This order will not prevent the Appellate Court from

proceeding with the final hearing of the Appeal.

JUDGE